

Court of Appeals No. 48507-9-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

CHARLES R. WOODS,

Respondent and Cross-Appellant,

v.

TOM and KAREN HALL, husband and wife in their individual and marital capacities; HALLMARK GROUP, LLC, a Washington limited liability company; HARWOODS LLC, a Washington limited liability company; and RTM ENTERPRISES, LLC, a Washington corporation,

Appellants and Cross-Respondents.

**RESPONDENT AND CROSS-APPELLANT
CHARLES R. WOODS' RESPONSE BRIEF**

PHILLIP J. HABERTHUR, WSBA No. 38038
LANDERHOLM, P.S.
805 Broadway Street, Suite 1000
P.O. Box 1086
Vancouver, WA 98666-1086
(360) 696-3312
Of Attorneys for Respondent and Cross-
Appellant Charles R. Woods

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I. INTRODUCTION

This case is about a failed restaurant venture resulting in the Halls' undisputed breach of their Purchase and Sale Agreement with seller Charles Woods. Following the Halls' breach, Respondent/Cross-Appellant Woods attempted to exercise his rights to repossess the restaurant equipment from Appellants Tom and Karen Hall, but the Halls refused to cooperate and instead asserted rights to the equipment. Woods then sued the Halls for conversion, replevin, and unjust enrichment. The Halls denied Woods' claims, and filed their own counterclaims.

After a multi-day bench trial, the trial court granted Woods' declaratory judgment claim, declaring that Woods had a valid security interest in the restaurant equipment, including the right to repossess the equipment, and granted Woods' conversion claim, as well as awarded him a money judgment for the restaurant equipment. Ample evidence supported not only the Halls' conversion, but also the value of the equipment. The trial court denied the Halls' affirmative defenses and all of their counterclaims. The trial court declined to award attorneys' fees and costs to Woods, and denied his request for pre-judgment interest. A judgment in the amount of \$40,123.04 was entered for Woods.

The Halls appealed, assigning error to the conversion ruling and damages. The Halls do not challenge the declaratory judgment claim in Woods' favor, nor the finding of a security interest encumbering the equipment. Woods cross-appeals the trial court's denial of his claim for

attorneys' fees for defending against claims related to the underlying lease and for pre-judgment interest for the equipment. Woods requests this Court affirm the trial court's ruling on the conversion claim and damages, but remand with instructions to the trial court to award Woods his attorneys' fees and costs, plus pre-judgment interest from the conversion to entry of the Judgment, in the amount of \$14,985.13. Woods also requests his attorneys' fees and costs on appeal.

II. COUNTERSTATEMENT OF THE ISSUES

Woods restates the Appellants' issues as follows:

1. Conversion is the unjustified, willful interference with a chattel, which deprives a person entitled to the property of possession. The Halls granted a security interest in the restaurant equipment, and upon their breach, they refused to provide the equipment to Woods for repossession. Did the Halls' unjustified and willful interference with Woods' right to the equipment constitute conversion?

2. Under the Purchase and Sale Agreement and after a breach, Woods could repossess the restaurant equipment, including the exhaust hood and bar, but the Halls refused to allow Woods access to this equipment. The expert testimony showed the exhaust hood and bar could be removed from the premises. Did the court err in awarding damages to Woods for the Halls conversion of the exhaust hood and bar?

3. The measure of damages for a conversion claim is the fair market value of the property when it was converted. The evidence included expert testimony from a restaurant industry/equipment expert,

establishing the value of the equipment at the time of the Halls' conversion. Did the trial court err in granting damages to Woods in an amount established by the trial testimony?

4. Woods' security interest included all of the restaurant equipment and fixtures. The trial court found the Halls refused to assemble and provide the equipment to Woods as required under the Purchase and Sale Agreement and Uniform Commercial Code. The Halls also disposed of certain equipment encumbered by Woods' security interest. Did the trial court err in awarding damages to Woods for the conversion of the equipment?

III. WOODS' ASSIGNMENTS OF ERROR ON CROSS-APPEAL

1. The trial court erred in denying Woods his attorneys' fees and costs as the prevailing party.

2. The trial court erred in denying Woods' pre-judgment interest from the conversion until entry of the Judgment after finding the amount was unliquidated.

IV. ISSUES RELATED TO WOODS' ASSIGNMENTS OF ERROR

1. Attorneys' fees and costs are recoverable in Washington if allowed by statute or contract. Here, both the Lease and Uniform Commercial Code provisions provide for an award of attorneys' fees to the prevailing party. Woods successfully proved the Lease did not control the determination of the assets, and successfully proved he had a valid security interest in the collateral. Did the trial court err in denying Woods

his attorneys' fees and costs under the contractual attorney fee provision of the Lease and under the UCC? (Assignment No. of Error 1).

2. Washington law provides that a party is entitled to prejudgment interest where the amount due is liquidated or readily determinable, "where the evidence furnishes data which, if believed, makes it possible to compute the amount with exactness, without reliance on opinion or discretion."¹ Here, Woods provided evidence showing the value of the equipment at the time of the conversion, and expert Sean Herron confirmed the values. Did the trial err in denying pre-judgment interest on the liquidated sum of damages? (Assignment of Error No. 2).

V. COUNTERSTATEMENT OF FACTS

A. Woods forms Harwoods, LLC, and opens Harwoods restaurant.

In 2009, Charles Woods and another partner formed Harwoods, LLC, to open a restaurant inside the Camas Hotel, in Camas, Washington.² Harwoods signed a five-year lease with appellant Hallmark Group, LLC, owned wholly by appellants Tom and Karen Hall. Hallmark also owned the Camas Hotel.³

From June 2009 through December 2009, Woods built the restaurant space.⁴ The restaurant (Harwoods) opened in January 2010.⁵

¹ *Rekhter v. Dept of Social and Health Services*, 180 Wash.2d 102, 124, 323 P.3d 1036, 1047 (2014).

² RP 10-11, testimony of Charles Woods from March 30, 2015.

³ Hallmark Group, LLC, Harwoods, LLC, and RTM Enterprises, LLC have not joined in the Halls' appeal.

⁴ CP 20, Findings of Fact, ¶ 1.

⁵ *Id.*

Unfortunately, the restaurant never gained traction in the community and it operated at an overall loss.⁶ Woods decided it was time to sell the business, and he went about finding a buyer.⁷

B. Lease provides assets of Harwoods only transfer to Landlord (Hallmark) upon termination.

Harwoods' five-year base lease with Hallmark was effective as of June 18, 2009.⁸ During the term of Lease, Harwoods was responsible for paying all personal property taxes assessed against the fixtures, furnishings, equipment, and other personal property as the owner of the assets.⁹ The Lease provided that all personal property and trade appliances must be removed by Harwoods, and "alterations, additions, fixtures, trade fixtures and personal property left on the demised premises" will become property of the Landlord only upon Lease termination or expiration.¹⁰

Harwoods would continue to own the assets, including fixtures, throughout the Lease, and there was no restriction on removing the assets from the premises. Harwoods would be responsible for repairing any damage incurred because of removing the assets, including fixtures.¹¹ Woods and Hall negotiated for the Halls to buy Harwoods and assume the Lease.¹²

⁶ RP 51-52, testimony of Charles Woods from March 30, 2015.

⁷ *Id.*

⁸ CP 48.

⁹ CP 50, Article 6.

¹⁰ CP 52, Article 10.

¹¹ *Id.*

¹² RPs 64-65, testimony of Charles Woods from March 30, 2015.

C. Woods sells Harwoods to the Halls.

The Halls wanted a restaurant in the Camas Hotel, so they negotiated with Woods to purchase Harwoods, LLC for \$75,000.¹³ The Halls agreed to make monthly payments of \$1,200 to Woods.¹⁴ This sales price would allow Woods to repay his outstanding debts related to Harwoods.¹⁵ The sale was advantageous for both parties—the Halls would have a restaurant in the hotel, and Woods could move on to other ventures.¹⁶ Woods formally closed Harwoods in May 2010, and the Halls re-opened as Oliver's the next month.¹⁷ The Halls were also operating Hallmark Group, LLC, which owned the Camas Hotel. The Halls therefore took over both landlord (Hallmark Group) and tenant (Harwoods) obligations of the Lease.

In 2011, the parties signed a written Purchase and Sale Agreement ("PSA") detailing the sale, and granting Woods a security interest in all of the assets.¹⁸ The security agreement granted Woods the right to repossess the assets and the business if the Halls defaulted on the agreement.¹⁹ The PSA detailed that the Lease would stay in effect, and if a default was under the PSA, Woods could continue with the Lease for Harwoods.²⁰ The parties were careful to ensure that the Lease was not terminated, and that

¹³ CP 22.

¹⁴ CP 48.

¹⁵ RPs 51-52, testimony of Charles Woods from March 30, 2015 and Trial Ex., 1, page 5.

¹⁶ RPs 52-53, testimony of Charles Woods from March 30, 2015.

¹⁷ CP 22.

¹⁸ Trial Ex. 1.

¹⁹ *Id.*

²⁰ Trial Ex. 1, p.2.

the assets did not pass to the Landlord as Woods needed the right to repossess those assets if the Halls defaulted.

D. Halls default on the payments and keep the business assets.

On June 25, 2012, the Halls notified Woods they were defaulting on the payments for the business.²¹ The Halls included a balance sheet showing that Harwoods had total assets of over \$97,000.²² Woods informed the Halls he would help them with the sale of the restaurant to a third party, and he then agreed to forbear from collecting the monthly payments for two months as an accommodation to the Halls.²³ Woods would later learn that the Halls could re-let the premises to a new tenant for a higher rent, and also sell many of the assets to the new tenant, RTM Enterprises, LLC.²⁴

Rather than working with Woods to address their default, the Halls instead pressured Woods to walk away from collecting on the balance by threatening that if he attempted to repossess the business assets, they would sue him for conversion and theft.²⁵ The Halls also threatened to involve law enforcement if Woods entered the restaurant for any reason.²⁶

The Halls relented, and consistent with the PSA and its security agreement provisions regarding repossession if a default occurs, the parties agreed that Woods could pick up all of the assets, including the

²¹ Supplemental CP ____, Trial Exhibit 4.

²² *Id.*

²³ Supplemental CP ____, Trial Exhibit 32, page 2.

²⁴ CP 22.

²⁵ Supplemental Trial Exs. 8 and 9.

²⁶ Supplemental Trial Ex. 9.

“restaurant fixtures” later because the Halls wanted to stay open through August 2012.²⁷ Importantly, the Halls never rescinded their threat of involving law enforcement if Woods tried to enter the restaurant.²⁸

E. Woods attempts to pick up the assets, but the Halls block his efforts.

Woods’ attorney and the Halls arranged for Woods to retrieve the assets.²⁹ Woods rented a U-Haul van and hired workers to assist him in removing the assets from the restaurant.³⁰ Woods’ attorney instructed the Halls to place all of the assets and inventory at the side door or curbside for retrieval.³¹ Woods was still worried about the Halls’ threats to involve law enforcement or have him arrested.³²

Tom Hall wrote to Woods on September 7th, the night before the scheduled pickup, stating that he was cancelling his availability and the parties must again re-schedule.³³ Hall also said he found a new tenant (RTM) that may want to purchase some of the assets.³⁴ In the meantime, the Halls had continued to operate the restaurant, using the assets, and not paying anything to Woods since June.

Finally, the parties agreed that Woods would pick up the assets and inventory on September 8, 2012.³⁵ Woods asked that the assets be brought

²⁷ Supplemental Trial Ex. 32 and Trial Ex. 11.

²⁸ RP 98, line 4-6, testimony of Charles Woods from March 30, 2015.

²⁹ Trial Ex. 14.

³⁰ RP 106-107, testimony of Charles Woods from March 30, 2015.

³¹ *Id.*

³² RP 98, line 4-6, testimony of Charles Woods from March 30, 2015.

³³ Supplemental Trial Ex. 12.

³⁴ *Id.*

³⁵ RP 107, lines 16-24, testimony of Charles Woods from March 30, 2015.

to the side door as he did not want to enter the restaurant due to the prior threats and he wanted to avoid escalation or confrontation.³⁶ Woods also sought to repossess the exhaust hood and bar, which both experts testified at trial could be removed.³⁷ The Halls' expert testified that he had removed three hoods in the last 30 days alone.³⁸ The Halls refused to move the assets to the door or curbside.³⁹

Woods left the restaurant without picking up any assets, and notified the Halls that the equipment was not being abandoned.⁴⁰ Woods continued to assert his right to repossess the collateral.⁴¹ Woods also learned that the Halls had sold some of Harwoods' assets to the new tenant RTM for \$10,000.⁴² The RTM Lease, trial exhibit 5, states on page 2 that RTM would purchase the existing restaurant equipment for \$10,000.⁴³ Trial exhibit 6 showed RTM's inventory, detailing the same assets owned by Harwoods (trial exhibit 45).⁴⁴

Woods continued to try to retrieve the assets and seek payment from the Halls, but they had clarified that they were no longer willing to cooperate.⁴⁵ Woods declined to repossess Harwoods, LLC. Woods then filed his lawsuit in December 2012.

³⁶ RP 104-105, testimony of Charles Woods from March 30, 2015.

³⁷ CP 22.

³⁸ CP 22 and RP, pages 6-7 (testimony of Bill Hayden from March 30, 2015).

³⁹ RP 108, lines 4-6, testimony of Charles Woods from March 30, 2015.

⁴⁰ Supplement Trial Ex. 11 and RP 108, lines 4-6, testimony of Charles Woods from March 30, 2015.

⁴¹ Supplement Trial Ex. 11.

⁴² CP 22.

⁴³ Trial Ex. 5, page 2.

⁴⁴ Trial Ex. 6.

⁴⁵ Supplement Trial Exs. 11 and 34.

F. Halls sell assets declare a large loss on their tax returns.

The Halls sold some of Harwoods' assets to RTM on November 1, 2012.⁴⁶ The sale price was \$10,000 for a relatively small fraction of the restaurant equipment.⁴⁷ In winding down, the Halls also reported significant losses on their tax returns related to Harwoods.⁴⁸ The Hall's took a \$73,000 loss on their personal income tax returns for Harwoods.⁴⁹ Mr. Hall also reported the business as valued at \$84,000 in 2011 (when it was purchased for \$75,000), and \$0 in 2012.⁵⁰

G. Halls retained \$78,000 in equipment.

When the Halls took over Harwoods, they obtained \$78,454 in restaurant equipment, including commercial kitchen equipment, dining room furniture, kitchen smallwares, coolers and refrigerators, and cash register systems.⁵¹ The equipment had little depreciation. Restaurant equipment expert Sean Herron testified that Exhibit 45 reflected the value of the restaurant equipment as of 2012, the date of the conversion.⁵² Mr. Herron testified that Woods obtained an exceedingly good deal on the majority of the equipment and the values listed were appropriate values

⁴⁶ Trial Ex. 5, page 2.

⁴⁷ *Id.*

⁴⁸ Supplement Trial Ex. 37.

⁴⁹ CP 20.

⁵⁰ *Id.*

⁵¹ Trial Ex. 45.

⁵² RP 121.

with the equipment left intact.⁵³ As of 2012, the date of the conversion, the items on Exhibit 45 had a combined value of \$78,454.⁵⁴

H. Woods' Second Amended Complaint and Halls' Counterclaims.

Woods brought several claims against the Halls and the new tenant, RTM, including declaratory judgment (against all defendants); replevin (against all defendants); conversion (against all defendants except RTM); unjust enrichment (against all defendants except RTM); and, judicial foreclosure of security agreement.⁵⁵

The Halls answered by denying the claims, and asserted counterclaims for declaratory judgment; tortious interference with business expectancy; tortious interference with business relations; frivolous claim; and, indemnification.⁵⁶

After a five-day bench trial, Judge Stahnke issued a “Judgment and Order following trial findings of fact and decision on civil claims” on November 20, 2015.⁵⁷ The trial court granted Woods’ declaratory judgment claim and conversion claim against the Halls. The trial court denied Woods’ conversion claim against RTM, and denied the unjust

⁵³ *Id.*

⁵⁴ Trial Ex. 45.

⁵⁵ Supplemental CP _____. Woods filed his first Complaint on December 21, 2012, an amended Complaint on May 3, 2013, and a 2nd Amended Complaint on September 16, 2013. CP 20.

⁵⁶ CPs 12-17.

⁵⁷ CP 19-22.

enrichment and replevin claims. The trial court found the Halls' affirmative defenses "lacked any credible evidence" and were denied, and the Halls' counterclaims were all denied. The trial court entered a judgment for Woods in the amount of \$40,123.04.⁵⁸

The Halls timely appealed the Judgment, and Woods timely cross-appealed. On appeal, the Halls only challenge the conversion claim and do not assign error to granting the declaratory judgment claim or denial of their counterclaims and affirmative defenses.

VI. ARGUMENTS

A. Standard of Review.

On an appeal from a bench trial, an appellate court's review is limited to determining whether substantial evidence supports the trial court's findings of fact and, if so, whether the findings support the trial court's conclusions of law.⁵⁹ "Substantial evidence" is "a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true."⁶⁰ Unchallenged findings of fact are verities on appeal.⁶¹ This Court defers to the finder of fact on issues regarding witness credibility

⁵⁸ *Id.*

⁵⁹ *City of Tacoma v. State*, 117 Wn.2d 348, 361, 816 P.2d 7 (1991).

⁶⁰ *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003).

⁶¹ *Robel v. Roundup Corp.*, 148 Wn.2d 35, 42, 59 P.3d 611 (2002).

and the weight of conflicting evidence.⁶² This Court reviews de novo a trial court's conclusions of law.⁶³

B. Substantial evidence supports the trial court's findings that the Halls refused to provide the equipment and that they threatened to involve law enforcement.

The trial court found that the Halls refused to make the equipment available to Woods.⁶⁴ The trial court also found that Woods demanded that the property be placed on the sidewalk and that the Halls refused.⁶⁵ The Halls argue that the trial erred in finding they failed to provide the business assets to Woods because there was "no evidence that the Halls asserted a claim of right or title over the movable assets inconsistent with Woods' rights."⁶⁶ The Halls position is unsupported by the evidence.

This Court does not reweigh the evidence or the credibility of witnesses on appeal.⁶⁷ This is exactly what the Halls seek to accomplish. The trial court weighed the evidence and the credibility of those witnesses, and found that Woods' testimony and evidence was more credible. The trial court was not persuaded by the Halls' argument⁶⁸ that the Harwoods-Hallmark Lease gave the Halls ownership rights to certain business assets and the Halls have provided no evidence on appeal to warrant reversal of

⁶² *Burnside v. Simpson Paper Co.*, 123 Wn.2d 93, 108, 864 P.2d 937 (1994).

⁶³ *Sunnyside*, 149 Wn.2d 873, 880.

⁶⁴ CP 22.

⁶⁵ *Id.*

⁶⁶ Brief of Appellants, page 13.

⁶⁷ *Burnside*, 123 Wn.2d 93, 108.

⁶⁸ Brief of Appellants, pages 13-16.

the trial court's ruling on that issue. This Court should affirm the trial court's decision.

C. Halls interfered with Woods' rights to repossess.

The trial court found that the Halls interfered with Woods' ability to reclaim his property.⁶⁹ The Halls strung Woods along, and ultimately failed to grant Woods access to retrieve his assets without removing the threat of law involving law enforcement. The Halls eventually sold the assets to RTM, conclusively prohibiting Woods from repossessing that specific property. The substantial evidence supported the trial court's finding that the Halls interfered with Woods' ability to reclaim his property.

D. Conversion claim well supported by evidence.

Conversion is the unjustified, willful interference with a chattel which deprives a person entitled to the property of possession.⁷⁰ Chattel includes both tangible and intangible goods, such as corporate property.⁷¹ Wrongful intent is not an element of conversion, and good faith is not a defense.⁷² "Therefore, neither good nor bad faith, neither care nor negligence, neither knowledge nor ignorance, are of the gist of the action in conversion."⁷³ The measure of damages in conversion is the value of the article converted at the time of the taking.⁷⁴

⁶⁹ CP 22.

⁷⁰ *In re Marriage of Langham*, 153 Wn.2d 553, 565, 106 P.3d 212 (2005).

⁷¹ *Id.* at 565.

⁷² *Paris Am. Corp. v. McCausland*, 52 Wn. App. 434, 443, 759 P.2d 1210 (1988).

⁷³ *Brown v. Brown*, 157 Wn. App. 803, 818, 239 P.3d 602 (2010).

⁷⁴ *Junkin v. Anderson*, 12 Wn.2d 58, 63, 120 P.2d 548 (1941).

The evidence and testimony substantially support the trial court's findings that the Halls exerted dominion over Woods' property and that they failed to provide that property to Woods after his demand. The undisputed evidence showed that: (1) Woods acquired a security interest in the business assets,⁷⁵ (2) Woods informed the Halls of his intent to reclaim possession of the equipment after they declared their default,⁷⁶ (3) the Halls threatened Woods with police action,⁷⁷ (4) Woods requested that the Halls provide the equipment to him,⁷⁸ (5) the Halls repudiated Woods' access to the property nearly at Woods' planned arrival to reclaim the property,⁷⁹ (6) Woods showed up to reclaim his property,⁸⁰ (7) the Halls did not provide the equipment to Woods by bringing the equipment to the curb or door,⁸¹ (8) the Halls sold a portion of Woods' property to RTM,⁸² and (9) Woods ultimately never received his property.⁸³ There was substantial evidence to support the trial court's finding that the Halls converted Woods' property, and this Court should affirm the trial court's decision.

⁷⁵ Trial Ex. 1 and CP 21.

⁷⁶ Supplemental Trial Exs. 11 and 12.

⁷⁷ Supplemental Trial Ex. 9.

⁷⁸ Supplemental Trial Exs. 11 and 12.

⁷⁹ Supplemental Trial Ex. 12.

⁸⁰ RP 107, lines 16-24, testimony of Charles Woods from March 30, 2015.

⁸¹ *Id.*

⁸² Trial Ex. 5.

⁸³ CP 22.

E. The trial court's finding of the equipment's fair market value was supported by ample evidence.

Trial testimony showed that the Halls obtained \$78,454 in restaurant equipment⁸⁴ when they took over Harwoods. Woods' restaurant equipment expert Sean Herron testified that the equipment depreciated little, and that Exhibit 45 reflected the value of the restaurant equipment as of 2012, the date of the conversion.⁸⁵ Mr. Herron testified that Woods obtained an exceedingly good deal on the majority of the equipment and the values listed were values with the equipment left intact.⁸⁶ As of 2012, the date of the conversion, the items on Exhibit 45 had a combined value of \$78,454.⁸⁷

The Halls use *Anstine v. McWilliams*⁸⁸ for the proposition that the purchase price, standing alone, is insufficient evidence of the value of the equipment. However, the Halls' argument severely overlooks the testimony of expert Sean Herron for the value of the property. Woods' purchase prices were not "standing alone." The trial court gave credence to Herron's testimony, which amply supports the trial court's finding on the fair market value.

F. Woods had the right to judicially foreclose the equipment.

After the Halls' default, Woods had the right to judicially foreclose his security interest in the equipment. The trial court granted Woods'

⁸⁴ Trial Ex. 45.

⁸⁵ RP 121, testimony of Sean Herron.

⁸⁶ *Id.*

⁸⁷ Trial Ex. 45.

⁸⁸ 163 P.2d 816, 24 Wn.2d 230, 239 (1945).

claim of declaratory judgment, which is not challenged on appeal. RCW 62A.9A-601 provides rights available to a secured party such as Woods. Under RCW 62A.9A-601(a), a secured party after default may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure.

Here, the trial court found that the Halls granted Woods a security interest, and that the Halls interfered with Woods' right to reclaim the secured property when they did not make the collateral available at the designated time and location. The trial court specifically found that RCW 62A.9A-609⁸⁹ provided for such relief. Further, the trial court did not err in reducing Woods' claim to judgment rather than ordering the return of the equipment. The Halls do not challenge the declaratory judgment ruling on appeal. This Court may affirm the trial court's ruling for other grounds, including the claims of declaratory judgment and judicial foreclosure to support the award of damages to Woods.

G. The trial court's finding that the Halls sold Woods' property for \$10,000 is considerably supported by the evidence.

The Commercial Lease between Hallmark and RTM explicitly stated that RTM was purchasing the "contents of the restaurant."⁹⁰ An "inventory" of the "contents" was provided showing that items sold were

⁸⁹ RCW 62A.9A-609(c) - Assembly of collateral. If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

⁹⁰ Trial Ex. 5.

Woods' property.⁹¹ A comparison of the Exhibit 45, Summary of Equipment, and the inventory of items sold to RTM (Ex. 6) show that the very same items are at issue.

Regardless of how the Halls characterize their argument, the evidence shows that the Halls failed to make the assets available to Woods. The Halls disposed of Woods' property (either by giving it to Hallmark to sell, or selling to RTM through Hallmark), depriving Woods of his right to possession and control of the assets. Even if the Halls are correct in their argument, it does not affect the trial court's decision that the Halls converted Woods' property.

The undisputed evidence showed that the Halls never returned the assets to Woods, which amply supports the trial court's finding that the Halls converted Woods' property.

VII. CROSS APPEAL

A. The trial court erred in not granting prejudgment interest because once liability has been determined the damages can be ascertained without exercising discretion.

This court reviews prejudgment interest awards for abuse of discretion.⁹² Prejudgment interest is allowed in civil litigation at the statutory judgment interest rate.⁹³ Prejudgment interest compensates a party for the loss of use of money or chattel to which it was entitled.⁹⁴ The

⁹¹ Trial Ex. 6.

⁹² *Scoccolo Constr., Inc. v. City of Renton*, 158 Wn.2d 506, 519, 145 P.3d 371 (2006).

⁹³ RCW 4.56.110 and RCW 19.52.020.

⁹⁴ *Richter v. Trimberger*, 50 Wn. App. 780, 785, 750 P.2d 1279 (1988) and *Hansen v. Rothaus*, 107 Wn.2d 468, 473, 730 P.2d 662 (1986).

rationale is that the claimant had funds tied up in the contested chattel which, if liquidated, could have been applied elsewhere.⁹⁵ “[P]rejudgment interest is a make-whole remedy.”⁹⁶

Washington courts have long held that a party is entitled to prejudgment interest where the amount due is “liquidated or readily determinable.”⁹⁷ If the claim is liquidated, then a prevailing party is entitled to prejudgment interest.⁹⁸

A “liquidated or readily determinable” claim is one “where the evidence furnishes data which, if believed, makes it possible to compute the amount with exactness, without reliance on opinion or discretion.”⁹⁹ An unliquidated claim is one “where the exact amount of the sum to be allowed cannot be definitely fixed from the facts proved, disputed or undisputed, but must in the last analysis depend upon the opinion or discretion of the judge or jury as to whether a larger or a smaller amount should be allowed.”¹⁰⁰

However, a dispute over the value does not change the character of a claim from liquidated to unliquidated.¹⁰¹ This is true “even though the adversary successfully challenges the amount and succeeds in reducing

⁹⁵ *Arzola v. Name Intelligence, Inc.*, 188 Wn. App. 588, 595, 355 P.3d 286 (2015).

⁹⁶ *Colonial Imports v. Carlton NW, Inc.*, 83 Wn. App. 229, 242, 921 P.2d 575 (1996).

⁹⁷ *Prier v. Refrigeration Eng'g Co.*, 74 Wn.2d 25, 32, 442 P.2d 621 (1968) and *Hansen*, 107 Wn.2d 468, 472.

⁹⁸ *Lakes v. von der Mehden*, 117 Wn. App. 212, 214, 70 P.3d 154 (2003).

⁹⁹ *Prier*, 74 Wn.2d 25, 32.

¹⁰⁰ *Hansen*, 107 Wn.2d 468, 472-73 and *Prier*, 74 Wn.2d 25, 32-33 (quoting Charles T. McCormick, *Damages* 54 at 216 (Hornbook Series) (1935)).

¹⁰¹ *Hansen*, 107 Wn.2d 468, 472 and *Prier*, 74 Wn.2d 25, 32.

it.”¹⁰² The claim need not be “agreed upon, stipulated or admitted in order to be liquidated.”¹⁰³

Where damages are easily computed by reference to objective sources, e.g., the property’s fair market value, the sum is also liquidated.¹⁰⁴ Also, the general rule in actions of conversion is that interest is allowed from the date of the conversion.¹⁰⁵ Here, the trial court erred in not awarding Woods prejudgment interest. The amount was liquidated because it was easily ascertainable or determinable since the equipment had a fair market value. The trial court found that at the time of conversion the equipment had a fair market value of \$40,123.04.¹⁰⁶ During the bench trial, Woods presented evidence showing the price of the equipment at \$78,454.01. Woods also presented evidence to the trial court showing that Woods entered a Purchase and Sale Agreement with the Halls to sell Harwoods, including the equipment for \$75,000. The trial court accepted this evidence, and the testimony of Sean Herron, in using these values for the equipment. That the trial court removed certain items from the equipment list is inconsequential.¹⁰⁷

¹⁰² *Prier*, 74 Wn.2d 25, 33 (quoting McCormick, *supra* at 216).

¹⁰³ *Aker Verdal A/S v. Neil F. Lampson, Inc.*, 65 Wn. App. 177, 190, 828 P.2d 610 (1992).

¹⁰⁴ *Aker Verdal*, 65 Wn. App. 177, 190 and *Walla Walla County Fire Protection Dist. No. 5 v. Washington Auto Carriage, Inc.*, 50 Wash. App. 355, 358-59, 745 P.2d 1332 (1987).

¹⁰⁵ *Grays Harbor County v. Bay City Lumber Co.*, 47 Wn.2d 879, 891, 289 P.2d 975 (1955).

¹⁰⁶ CP 22.

¹⁰⁷ The trial court removed the POS terminal, signage, inventory, last month’s rent, security deposits, and attached sinks with faucets.

The trial court could easily compute the fair market value of the equipment at the time of conversion, which is evidenced by the trial court's award of \$40,123.04 to Woods. Under *Aker Verdal*, the \$40,123.04 is a liquidated amount since it represented the fair market value, entitling Woods to prejudgment interest on that figure. This is not a case where opinion testimony or discretion was necessary to determine the value of an asset (i.e., a litigant might use an expert to prove emotional distress damages in an outrage claim, or a business owner could use an expert to determine "goodwill" value of business). This was a straight forward monetary case with defined values for which the court used to reach its conclusion. Therefore, this Court should reverse the trial court and remand with instructions to award Woods prejudgment interest.

B. The trial court erred in not awarding Woods attorney's fees and costs.

The trial court erred in not awarding Woods his attorney's fees and costs. Woods presented multiple theories for an award of his fees. First, the Lease between Harwoods and Hallmark contained an attorney fee provision. Second, RCW 62A.9A.607(d) allows a secured party to recover reasonable expenses of collection and enforcement, including reasonable attorneys' fees and legal expenses incurred by the secured party.

1. **The Halls relied significantly on the Lease provisions between Harwoods and Hallmark throughout the litigation, necessitating Woods to defend against their arguments and allegations.**

The Lease contract between Harwoods and Hallmark contained an attorney fee provision.¹⁰⁸ The attorney fee provision provides for an award of attorneys' fees and costs to the prevailing party regarding the enforcement or interpretation of any of the terms and conditions of the Lease.¹⁰⁹

During the litigation, the Halls relied substantially on the Harwoods-Hallmark Lease, and interpretation of the Lease provisions was necessary to resolving ownership of the equipment. The Halls relied on the Lease to assert that Woods must pay any unpaid rent by Harwoods to Hallmark over the last two years.¹¹⁰ The Halls used the Harwoods-Hallmark Lease in their summary judgment pleadings¹¹¹ (arguing that Harwoods, under the Lease, could not remove fixtures) and during trial (using it as evidence that Harwoods did not have a right to any fixtures).¹¹² Tom Hall even testified regarding his personal "characterization" of certain "fixtures."¹¹³

On appeal, the Halls have once again relied upon the Harwood-Hallmark Lease to argue against Woods' security interest. This required

¹⁰⁸ CP 63.

¹⁰⁹ CP 63.

¹¹⁰ Supplemental Trial Ex. 8.

¹¹¹ Supplemental CP ____, (Defendants' Motion for Summary Judgment, Docket entry #26).

¹¹² RPs 4-11, testimony of Charles Woods from October 12, 2015 and RP, pages 4-9 testimony of Tom Hall from July 14, 2015.

¹¹³ RPs 6-7, testimony of Tom Hall from July 14, 2015.

Woods to defend against the Lease provisions and interpretation of the Lease.

In Washington, a third party is entitled to an award of attorney fees and costs where the party has had to defend against a contract or Lease containing an attorney fee provision.¹¹⁴ Under RCW 4.84.330, the legislature provided:

In any action on a contract or lease entered into after September 21, 1977, where such contract or lease specifically provides that attorneys' fees and costs, which are incurred to enforce the provisions of such contract or lease, shall be awarded to one of the parties, the prevailing party, **whether he or she is the party specified in the contract or lease or not**, shall be entitled to reasonable attorneys' fees in addition to costs and necessary disbursements.

Here, RCW 4.84.330 and the rulings from *Herzog Aluminum* and *Yuan* apply because the Halls sought to defeat Woods' security interest by referring to the Harwoods-Hallmark Lease. The Halls' pleading also sought attorney fees from Woods based on the Lease,¹¹⁵ and Woods was forced to defend against the Lease throughout the proceedings. Woods is entitled to reciprocity because he defeated the Halls' claims under the Lease.¹¹⁶ Therefore, this Court should reverse the trial court and remand with instructions to award Woods his attorney fees under RCW 4.84.330.

¹¹⁴ See generally *Herzog Aluminum v. General Am. Window Corp.*, 39 Wn. App. 188, 692 P.2d 867 (1984) and *Yuan v. Chow*, 96 Wn. App. 909, 982 P.2d 647 (1999).

¹¹⁵ CP 17.

¹¹⁶ CPs 19-22.

2. **RCW 62A.9A.607(d) allows a secured party to recover its reasonable expenses for collection and enforcement, including reasonable attorneys' fees and legal expenses incurred by the secured party.**

Under RCW 62A.9A.607(d), a secured party may recover reasonable expenses of collection and enforcement, including reasonable attorneys' fees and legal expenses incurred by the secured party. Here, the trial court correctly found that the Halls granted Woods a security interest in the equipment in the PSA. When the Halls failed to pay the amount due and owing under the PSA, the UCC allowed Woods to foreclose on his security interest.

Woods' Second Amended Complaint alleged foreclosure of security interest as a cause of action. The trial court found that Woods had a security interest in the equipment,¹¹⁷ and the Halls do not assign error to this on appeal. This Court need not review alleged errors not preserved.¹¹⁸ Nor is this Court required to review unassigned errors.¹¹⁹ By failing to object or assign error properly, the Halls have waived the argument or issue.¹²⁰ Therefore, the trial court's finding of a security interest is conclusive.

Since Woods had a security interest in the equipment and because he foreclosed on that security interest (under the UCC), Woods is entitled to his reasonable attorney fees and costs in any collection or enforcement

¹¹⁷ CP 21.

¹¹⁸ RAP 2.5(a).

¹¹⁹ RAP 10.3(a)(3), (g).

¹²⁰ *Unigard Ins. Co. v. Mut. of Enumclaw Ins. Co.*, 160 Wn. App. 912, 922, 250 P.3d 121 (2011).

efforts. Therefore, this Court should reverse the trial court and award Woods his attorney fees under RCW 4.84.330.

C. Woods is entitled to his fees and costs before the trial court and on appeal.

Similar to the proceedings before the trial court, Woods is entitled to his fees and costs on appeal under both RCW 62A.9A.607(d) and the Lease. Woods is once again forced to defend against the Halls' claims related to damages for the equipment, and arguments related to the Lease interpretation. Under RCW 4.84.330, a court must award the prevailing party their attorney's fees where the contract sued under has an attorney fee provision.

Woods requests this Court remand to the trial court with directions to award attorney's fees to Woods, and also grant Woods his attorney's fees and costs on appeal under RAP 18.1(a).

VIII. CONCLUSION

The evidence supports the trial court's award of damages to Woods for the conversion by the Halls. This portion of the trial court's ruling should be affirmed. The damage suffered by Woods was a liquidated amount, and the trial erred in not awarding pre-judgment interest to Woods. The trial court also erred in not granting Woods' request for attorneys' fees and costs as allowed by both the Lease and RCW 62A.9A.607(d). Woods requests that this Court affirm the trial court's ruling as to conversion and damages, but reverse and remand with instructions to the trial court to award Woods pre-judgment interest and

his attorneys' fees and costs incurred at trial. For the same reasons, Woods is entitled to his fees and costs on appeal.

DATED this 22th day of July, 2016.

Respectfully Submitted,

LANDERHOLM, P.S.

s/ Phillip J. Haberthur

PHILLIP HABERTHUR, WSBA No. 38038

GEORGE J. SOURIS, WSBA No. 47491

Attorneys for Respondent and Cross-Appellant
Charles R. Woods

AFFIDAVIT OF SERVICE

STATE OF WASHINGTON)
) ss.
County of Clark)

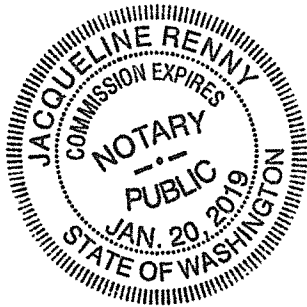
I, Heather A. Dumont, being first duly sworn on oath, depose and state that I am now and at all times herein mentioned was, a citizen of the United States, a resident of the State of Washington, and over the age of 21 years.

On the 22th day of July, 2016, a copy of the foregoing Respondent and Cross-Appellant Charles R. Woods' Response Brief was delivered via first class United States Mail, postage prepaid, to the following person(s):

Laura Hazen
Hazen, Hess & Ott, PLLC
723 NE Fourth Avenue
Camas, WA 98607

Heather Dumont
HEATHER A. DUMONT

SUBSCRIBED AND SWORN to before me this 22th day of July,
2016 by Heather A. Dumont.



Jacqueline Kenny
NOTARY PUBLIC for the State of
Washington, Residing in the County of
Clark.
My Commission Expires: 1-20-2019

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Respondent-Cross Appellant Woods' Response Brief

Sender Name: Bradley W Andersen - Email: philh@landerholm.com

A copy of this document has been emailed to the following addresses:

laura@camaslaw.com

heather.dumont@landerholm.com

george.souris@landerholm.com